

HOWARD COUNTY ETHICS COMMISSION  
3430 Courthouse Drive  
Ellicott City, Maryland 21043

February 22, 2022

**ADVISORY OPINION NO. 2022-01**

The Howard County Ethics Commission (“Commission”) has received a request in which the Requestor<sup>1</sup> has inquired prospectively about potential conflicts of interest between his future employment with the County and his current employment as a consultant. The Commission finds that Requestor’s consulting business is not in conflict with his County employment pursuant to the Howard County Ethics Law, Howard County Code Section 22.200 et seq. (the “Ethics Law”).

**I. BACKGROUND**

The Requestor is a contingent part-time executive exempt employee with the Department of County Administration serving as a Communications Advisor. The Requestor’s County employment responsibilities will include participation in the development of communication strategic plans for Executive Branch programs and initiatives, review of County posts, press releases and other communications, and assisting and coordinating with all media relations, as needed.

The Requestor owns a consulting business that provides strategic communications services. These services include speech-writing and talking points, crisis communications and policy analyses. The consulting business is not a lobbying firm and does not participate in political work.

At the hearing before the Commission on January 25, 2022, the Requestor and the County Administration’s Chief of Staff answered various questions of the Commission. The Requestor testified that he does not have any current client that creates a conflict of interest with the County and was seeking an Advisory Opinion out of an abundance of caution. He further agreed that he would not accept a consulting engagement from a party seeking funding from the County or seeking to do business with the County. Further, Requestor is willing to keep the Administration apprised of his consulting clients.

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<sup>1</sup> For purposes of this opinion the Requestor is identified as the prospective employee. Howard County Code Section 22.203(m)(1) provides that “[a]ny person subject to this subtitle may request an advisory opinion from the Commission concerning the application of this subtitle.” The request for an Advisory Opinion was received from the County Administration’s Chief of Staff, who is a person subject to this subtitle. As a prospective employee, Requestor was not yet subject to the Ethics Law and therefore, was not entitled to request an advisory opinion prior to his employment. The Commission commends the Administration for resolving these issues prospectively. By the time this Advisory Opinion is issued, the Requestor will be an employee of the County and subject to the Ethics Law.

## II. THE LAW

The relevant portions of the Ethics Law are outlined below.

### **Sec. 22.201. - Statement of purpose and policy.**

- (a) Howard County, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

### **Sec. 22.204. - Prohibited conduct and interests.**

#### *(b) Employment and Financial Interest Restrictions.*

- (1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:
  - (i) Be employed by or have a financial interest in any entity:
    - a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or
    - b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or
  - (ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.
- (2) The prohibitions of paragraph (1) of this subsection do not apply to:
  - (i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
  - (ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
  - (iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

\* \* \* \*

(e) *Use of Prestige of Office.*

- (1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.
- (2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

\* \* \* \*

(g) *Disclosure of Confidential Information.* Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

### III. ISSUE

Is the Requestor's secondary employment as a communications consultant prohibited secondary employment pursuant to the Howard County Ethics Law?

### IV. DISCUSSION

#### A. Employment Prohibitions

The Ethics Law precludes simultaneous employment for an official with an entity that is subject to official authority of the covered employee or the authority of the Howard County agency, board or commission with which the Requestor is affiliated. To be consistent with prior Opinions of the Commission, the term "employment" is construed broadly to effectuate the purposes of the ethics law. (*See* Opinion Nos. 20-01, 12-05).

The Requestor's employment as a consultant is only prohibited employment under Ethics Law Section 22.204 if such employment is subject to the authority of the Department of County Administration, which is Requestor's employing County agency. The Requestor has verified that none of his consulting clients are subject to the authority of the Department of County Administration and that he will refrain from taking any future consulting clients that seek to do business with the County.

B. Disclosure of Confidential Information

Ethics Law Section 22.204(e) prohibits officials from disclosing or using for their own gain or that of another, confidential information acquired in fulfillment of their public role. It will be necessary for the Requestor to avoid both affirmative and inadvertent disclosure of confidential information. Obviously, the Requestor would not be free to discuss matters brought to his attention in his County employment, nor could he discuss confidential matters with his appointing authority or other County employees regarding his consulting clients.

C. Appearance of Conflict/Inconsistent Employment

Consistent with prior decisions of the Ethics Commission, we consider an appearance of conflict as a use of prestige of office, which is prohibited under the Ethics Law. *See* Section 22.204(d). *See also* Op. Nos. 12-05; 07-05; 04-02. One type of appearance of conflict is deemed “inconsistent employment.” Inconsistent employment arises when a situation raises clear and serious conflict of interest issues, but in which specific authority or contractual affiliations set forth in 22.204(b) are not present. *See* Op. No. 07-05. Even if the connection between the Requestor’s County employment and his consulting firm is not barred under Section 22.204(b), we must determine whether the secondary employment has the potential for creating an appearance of a conflict.

The Ethics Commission typically looks to the following non-cumulative list of factors to determine whether a relationship is inconsistent employment:

- (1) How the employment was acquired;
- (2) Whether the employment was obtained on County time;
- (3) How the subject matter of the activity relates to County duties;
- (4) Whether outside activity derives from work performance or relationships that occur in connection with County responsibilities;
- (5) Whether some aspect of the County job would be impacted by the employment relationship; and
- (6) Whether the employer would feel pressured or perceived an advantage in County dealings because of its hiring of the County employee.

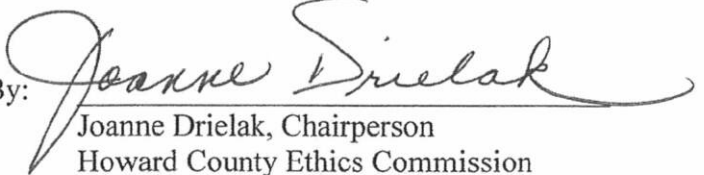
*See* Op. Nos. 12-05; 07-05.

In considering the factors, the Commission does not think any potential conflicts, or appearances of a conflict, would negate the Requestor’s ability to hold both positions.

## **V. CONCLUSION**

For the reasons stated herein, the Requestor's secondary employment as a communications consultant is not in conflict with his County employment. However, in order to eliminate any potential for a conflict or appearance of a conflict, the Requestor shall refrain from taking any consulting clients who seek to do business with Howard County. Further, the Requestor shall not use Howard County Government in any promotional or advertising materials regarding his private consulting business or perform any secondary employment activities during times working for the County.

### HOWARD COUNTY ETHICS COMMISSION

By:   
Joanne Drielak, Chairperson  
Howard County Ethics Commission

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